



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: December 4, 2012

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division

SUBJECT: Wisconsin Farmland Preservation Program, Creating Ch. ATCP 49, WI Admin. Code (Hearing Draft Rule)

PRESENTED BY: Keith Foye and Alison Volk, Agricultural Resource Management Division

REQUESTED ACTION:

At the December 18, 2012, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) creating ch. ATCP 49, related to the farmland preservation program.

SUMMARY:

Background

Wisconsin's Farmland Preservation Program (FPP), ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. Chapter 91, Stats., was updated to acknowledge the growing pressures on farmland across the state and to curb the increasing conversion of farmland out of agricultural use.

The farmland preservation law requires all counties to update their farmland preservation plans before January 1, 2016. The farmland preservation planning process ensures that local governments evaluate the agricultural land within their boundaries and consider the role that agriculture plays in their local economy. Counties must submit farmland preservation plans to DATCP for certification. In order to be certified by DATCP, the plan must meet certain requirements under ch. 91, Stats. Once a plan is certified, land that is identified as part of a farmland preservation area is then eligible for other parts of the FPP.

One such part of the FPP is farmland preservation zoning. Local governments may choose to adopt farmland preservation zoning ordinances to protect farmland. Similar to farmland preservation plans, zoning ordinances must be submitted to the department for certification. To be certified, the ordinance must also meet certain requirements under ch. 91, Stats. The certification process ensures that only compatible uses are allowed in the farmland preservation

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district to limit pressures on active agriculture created by the presence of incompatible uses. Once certified, landowners are eligible to claim farmland preservation tax credits.

Another component of the farmland preservation program is the farmland preservation agreement. Under ch. 91, Stats., any new agreement must cover land located in a landowner-initiated and state-designated Agricultural Enterprise Area (AEA). Landowners with farmland preservation agreements are eligible to collect farmland preservation tax credits. By clustering agreements in areas that are primarily devoted to agricultural use, farmland can be better protected because a concentration of agriculture provides landowners with the confidence that the surrounding land will remain in agriculture. This confidence encourages landowners not only to continue farming, but to make additional investments in their agricultural operations.

Rule Content

General

This rule does all of the following:

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies information required in an application for a farmland preservation agreement under s. 91.64 (2) (h), Stats.

Definitions

This rule:

- Clarifies types of uses that may be listed by a political subdivision as accessory uses and agriculture-related uses.
- Defines crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

Farmland Preservation Plans

This rule:

- Clarifies that a county has one year after the certification expiration date to have its farmland preservation plan certified by the department.

- Clarifies when counties may request an extension to the expiration of their farmland preservation plan to facilitate coordination with other planning and zoning efforts that may be occurring in the county.
- Clarifies that any amendment to a certified farmland preservation plan must be submitted to the department for certification.
- Clarifies that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county's comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

Farmland Preservation Zoning

This rule:

- Clarifies that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive, or more restrictive, than the density standards under ch. 91, Stats.
- Describes the types of uses that would qualify as governmental, institutional, religious, or nonprofit community uses.
- Clarifies that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has a year after the certification expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to collect farmland preservation tax credits.
- Clarifies that local governments may request an extension to the expiration of their farmland preservation zoning ordinance to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

Farmland Preservation Agreements

This rule:

- Requires landowners to include in an application for a farmland preservation agreement those lands that the landowner owns yet intends to exclude from coverage under the agreement.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

There are no federal regulations or statutes related to this rule.

Comparison with rules in adjacent states

Michigan, Illinois, and Minnesota have statewide programs in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits. These programs require local governments to engage in planning efforts prior to allowing landowners to enter into these agreements.

Michigan allows farmers voluntarily to enter into a Farmland Development Rights Agreement with the state. In exchange for income tax credits and exemptions from special assessments, landowners agree not to develop the land for a specified number of years.

In Illinois, any single landowner, or two or more contiguous landowners with over 350 acres of land, may form an Agricultural District. The county government is responsible for approving and implementing these areas, however the Illinois Department of Agriculture may advise those county governments interested in forming or expanding these areas. Once land is within an Agricultural District, the area remains protected for ten years. Landowners can request additions to, deletions from, or dissolution of the area. Land within the area is protected from local laws that might restrict farming practices and from special assessments.

In Minnesota, counties outside of the metropolitan area can participate in the Greater Minnesota Agricultural Preserves Program. Counties that want to participate must develop an agricultural land preservation plan for review and approval by the commissioner of the Minnesota Department of Agriculture. The plan must identify land for long-term agricultural use and anticipate expected growth around urbanized areas. The designated areas must be adopted as part of the county's comprehensive plan. Landowners that are located within these areas may then place a restrictive covenant on their land, agreeing to limit the land to agricultural or forestry use. The covenant is recorded on the title to the land. In exchange for agreeing to preserve land for long term agricultural use, the landowner receives property tax credits of \$1.50 per acre, per year.

Summary of factual data and analytical methodologies

To develop this rule, DATCP consulted a group of stakeholders familiar with and potentially affected by the provisions of the rule. DATCP also collected feedback from local government officials who had experience working with, understanding, and implementing the farmland preservation law.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

This rule will have a generally positive impact on agriculture-related businesses. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that the impact of agriculture-related business can be measured within the community. By clarifying this requirement in the planning process, the rule may aid communities in accurately capturing the breadth of agriculture-related businesses within the area.

This rule clarifies farmland preservation zoning standards, encouraging local governments to include these agriculture-related enterprises in the zoning district. Most agriculture-related businesses may be allowed in a farmland preservation zoning district either as an agriculture-related use or an accessory use. Though such businesses may or may not collect tax credits, their presence in the district may add additional economic certainty to farmers within the certified farmland preservation district.

There are currently over 15,000 farm owners on approximately 2.8 million acres of farmland claiming farmland preservation income tax credits. There is a statutory cap of \$27 million for tax credits claimed for lands subject to farmland preservation zoning.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings on the dates and at the locations specified in the hearing notice. The hearing dates and locations have not yet been determined.

Following the public hearings, DATCP will prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, DATCP will transmit that final draft rule to the Governor for his written approval and then to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION CREATING AND
ADOPTING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 rule *to create* ch. ATCP 49 *relating to* Wisconsin's farmland preservation program and affecting
3 small business.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

Statutes Interpreted

Statutes Interpreted: ch. 91, Stats.

Statutory Authority

Statutory Authority: ss. 91.02, and 93.07 (1), Stats.

Explanation of Statutory Authority

DATCP has specific and general authority to establish rules interpreting and clarifying provisions of ch. 91, the farmland preservation program. DATCP has general authority for promulgating rules under s. 93.07 (1), for all of its program areas, and under s. 91.02 for the administration of ch. 91, Stats. Under s. 91.02 (1), DATCP has specific authority to set forth technical specifications for farmland preservation zoning maps under s. 91.38 (1) (d). DATCP has specific authority under s. 91.02 (2) to identify additional uses that would qualify as accessory uses, agricultural uses, agriculture-related uses, and base farm tracts. DATCP also has specific authority under s. 91.02 (2) to specify requirements for certifications of farmland preservation plans under s. 91.18 (1) (b) as well as farmland preservation zoning ordinances under s. 91.38 (1) (i). Section 91.02 (2) also gives DATCP specific authority to require information in an application for certification of a farmland preservation plan or amendment under s. 91.20 (4) or zoning ordinance under s. 91.40 (5), and to specify the types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3. DATCP has authority under s. 91.02 (2) to authorize additional uses in a farmland preservation zoning district under s. 91.42 (4), including additional uses allowed as permitted uses under s. 91.44 (1) (g) and as

conditional uses under s. 91.46 (1) (j). Finally, DATCP has the authority under s. 91.02 (2) to require information in an application for a farmland preservation agreement under s. 91.64 (2) (h).

Related Statutes and Rules

Chapter 91 governs the state's farmland preservation program. Landowners who participate in the zoning or farmland preservation agreement provisions of the program are eligible for farmland preservation tax credits under s. 71.613, Stats. Under ss. 91.80 and 91.82, Stats., landowners claiming those tax credits are required to comply with soil and water conservation standards promulgated by the department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c), Stats. Those standards are found primarily in ch. ATCP 50, Wis. Adm. Code, as well as the Department of Natural Resources performance standards under ss. NR 151.02 to 151.08, Wis. Adm. Code.

Plain Language Analysis

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The farmland preservation law requires all counties to update their farmland preservation plans before January 1, 2016. The farmland preservation planning process ensures that local governments evaluate the agricultural land within their boundaries and consider the role that agriculture plays in their local economy. Counties must submit farmland preservation plans to DATCP for certification. In order to be certified by DATCP, the plan must meet certain requirements under ch. 91, Stats. Once a plan is certified, land that is identified as part of a farmland preservation area is then eligible for other parts of the FPP.

One such part of the FPP is farmland preservation zoning. Local governments may choose to adopt farmland preservation zoning ordinances to protect farmland. Similar to farmland preservation plans, zoning ordinances must also be submitted to the department for certification. To be certified, the ordinance must meet certain requirements under ch. 91, Stats. The certification process ensures that only compatible uses are allowed in the farmland preservation district to limit pressures on active agriculture created by the presence of incompatible uses. Once certified, landowners are eligible to claim farmland preservation tax credits.

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Note: This chapter implements Wisconsin’s farmland preservation program under ch. 91, Stats. The purposes of the farmland preservation program are to preserve agricultural lands, to promote soil and water conservation, to promote orderly land use planning and development, and to provide tax credits for owners of farmland covered by the program. This chapter is adopted under ss. 91.02 and 93.07 (1), Stats.

SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

ATCP 49.01 Definitions. In this chapter:

(1) "Accessory use" means any of the following land uses on a farm:

(a) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use that includes any of the following:

1. A facility used to store or process raw agricultural commodities, which are primarily produced on the farm.

2. A facility used to keep livestock on the farm.

3. A facility used to store or process inputs primarily for agricultural uses on the farm.

4. A facility used to keep or service vehicles or equipment primarily used on the farm.

5. A wind turbine or solar energy facility that collects wind or solar energy on the farm and uses or transforms it to provide energy primarily for use on the farm.

6. A manure digester, bio-fuel facility, or other facility that produces energy primarily from materials grown or produced on the farm, or produces energy primarily for use on the farm.

7. A waste storage or processing facility used to store or process animal waste produced solely from livestock kept on the farm.

8. A greenhouse for raising plants.

9. A roadside stand selling agricultural products produced primarily on the farm.

1 10. An agricultural research facility utilizing agricultural products produced primarily on
2 the farm.

3 11. Any other building, structure, or improvement that is an integral part of, or is
4 incidental to, an “agriculture use.”

5 (b) An activity or business operation that is an integral part of, or incidental to,
6 an agricultural use that includes any of the following:

7 1. Direct sales from farm to customer, such as “you-pick” operations.

8 2. Crop mazes.

9 3. Agricultural tourism.

10 4. Any other activity or business operation that is an integral part of, or incidental to, an
11 agriculture use.

12 (c) A farm residence.

13 (d) A business, activity, or enterprise, whether or not associated with an agricultural use,
14 that is conducted by the owner or operator of the farm, that requires no buildings, structures, or
15 improvements other than those described in par. (a) or (c), that employs no more than 4 full-time
16 employees annually, and that does not impair or limit the current or future agricultural use of the
17 farm or of other protected farmland.

18 (e) Any other use that the department, by rule, identifies as an accessory use.

19 (2) “Agriculture-related use” means:

20 (a) An agricultural equipment dealership, facility providing agricultural supplies, facility
21 for storing or processing agricultural products, or facility for processing agricultural wastes.

(b) A facility or use integral to an agricultural use regardless of whether that use is located on a farm that relies on agricultural uses conducted primarily off-site that includes any of the following:

1. A facility that primarily provides agricultural supplies, agricultural equipment, fertilizers, pesticides or other agricultural inputs, or agricultural services directly to farms.

2. A facility that primarily stores, processes, handles, or markets raw agricultural commodities.

3. A facility that primarily slaughters livestock from farms not attached to the facility.

4. A facility that processes agricultural by-products or wastes produced primarily off-site.

5. A manure digester, bio-fuel facility or other facility that produces energy primarily for use off-site.

6. Any other facility or use integral to an agricultural use.

(c) Any other use that the department, by rule, identifies as an agriculture-related use.

(3) "Base farm tract" means one of the following:

(a) A tract of land as defined in s. 91.01 (5) (a), Stats.

(b) All land, whether or not the parcels are contiguous, that is in a farmland preservation zoning district under the same zoning ordinance and that is part of a single farm on the date that the owner of the farm first creates a new lot or parcel from that farm, regardless of any subsequent changes in the size of the farm. The new lot or parcel created is included in the base farm tract.

(c) Any other tract that the department by rule defines as a base farm tract.

Note: The base farm tract may be all contiguous land under common ownership at the time the political subdivision's ordinance is first certified by the department.

1 Alternatively, the political subdivision may choose to set the determination date
2 for identifying the land included in the base farm tract at the time a lot or new
3 parcel is created. The political subdivision may choose whether to draw the base
4 farm tract boundary around all contiguous land owned by the same person or all
5 land that is part of the same farm regardless of whether the parcels are contiguous.

6 (4) "Communications use" includes transmission lines, cell towers, antennae and
7 broadcast towers.

8 (5) "Consistent with" means furthers or does not contradict objectives, goals, and
9 policies in a relevant document.

10 **Note:** This definition is similar to that found in s. 66.1001 (1) (am), Stats., for the
11 comprehensive planning program. Under s. 91.10 (2), Stats., the farmland
12 preservation plan is required to be "consistent with" the county's comprehensive
13 plan.
14

15 (6) "Contiguous" means adjacent to or sharing a common boundary. "Contiguous"
16 land includes land that is separated only by a river, stream, section line, public road, private road,
17 or railroad or utility right-of-way.

18 (7) "Crop" means a cultivated plant that includes any of the following:

19 (a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans.

20 (b) Fruits, including apples, grapes, cranberries, cherries, and berries.

21 (c) Vegetables, including tomatoes, carrots, sweet corn, and squash.

22 (d) Horticulture for culinary, medicinal, or aesthetic purposes, including herbs and
23 spices, ginseng, and ornamental shrubs and trees.

24 (e) Plants raised for energy production, including switchgrass.

25 (8) "Drainage use" includes drainage ditches and drains, as defined in s. 88.01 (8), Stats.

26 (9) "Electric transmission use" includes high voltage lines and electric substations.

27 (10) "Forest management" means private forest lands and woodlands managed in
28 accordance with a written management plan.

Note: This includes land that is designated as managed forest land under a forest tax program established in ss. 77.80 to 77.91, Stats. A wooded lot that is not actively managed under a written management plan may be included in a farmland preservation zoning district as an open space or natural resource area but may not be included as an agricultural use. Government-owned woodlands may also be included as an open space or natural resource area.

(11) "Governmental use" includes community centers, police and fire facilities, public parks and town halls.

(12) "Pipeline use" includes oil and gas pipelines.

(13) "Secretary" means the secretary of the department of agriculture, trade and consumer protection.

(14) "Spatial location data" means data referenced to a specific coordinate system that identifies the boundaries and spatial extent of parcels of land included in a farmland preservation area or a farmland preservation zoning district.

(15) "Transportation use" includes roads, rail facilities and agricultural aeronautic facilities.

(16) "Utility use" includes solar power, coal power and natural gas-fired generation facilities. "Utility use" also includes wind turbines.

SUBCHAPTER II

FARMLAND PRESERVATION PLANS

ATCP 49.10 Farmland preservation plan certification. (1) CERTIFICATION

EXPIRATION. The certification of a farmland preservation plan expires on the date provided in the most recent certification of the plan or its amendment, or, if the certification does not provide an expiration date, on the date provided under s. 91.14, Stats. If a county with an expired plan does not obtain certification of a farmland preservation plan by December 31 of the year following the certification expiration date of the plan, the department may withdraw certification

of any zoning ordinances within the county under the procedures in s. ATCP 49.29, effective on December 31 of the year following the year of plan expiration.

Note: If a county plan expires on December 31, 2014, the county has until December 31, 2015, to obtain certification of the plan by the department. If the plan is not certified by the department by December 31, 2015, the department may withdraw certification of any zoning ordinances in the county, effective December 31, 2015. Under s. 71.613 (1) (h) 2., the landowners with land in these farmland preservation zoning districts could not claim tax credits on those lands for the tax year 2015, since certification must be in effect on the last day of the calendar year in order for a plan to be considered certified.

The county is not precluded from seeking future certification of its farmland preservation plan.

(2) CERTIFICATION EXPIRATION EXTENSION. The secretary may delay the expiration date of the certification of a county's farmland preservation plan for up to 2 years upon a written request from the county demonstrating to the secretary's satisfaction that a delay would allow the county to coordinate the farmland preservation planning process with other planning or zoning efforts in the county.

(3) AMENDMENTS AND CERTIFICATION. If, after July 1, 2009, a county amends a farmland preservation plan in accordance with s. 66.1001 (4), Stats., the amendment shall be submitted to the department for certification.

Note: Under s. 91.16 (8), Stats., amendments are not effective unless certified by the department.

ATCP 49.12 Certification standards. The department may certify a county's farmland preservation plan under s. 91.16, Stats., if that plan complies with the requirements in s. 91.10 (1) and (2), Stats., and all of the following:

(1) RATIONALE. (a) The farmland preservation plan shall describe the rationale used to determine which areas the county plans to preserve for agricultural use and agriculture-related

1 use. The rationale shall be based on objective criteria related to the characteristics of the land
2 parcels themselves, including consideration of all of the following criteria:

- 3 1. Whether the soils are suitable for agricultural production.
- 4 2. Whether the land has historically been used for agricultural use or agriculture-related
5 use.
- 6 3. Whether the land is in close proximity to agricultural infrastructure.
- 7 4. Whether the land is in undeveloped natural resource or open space areas that connect
8 other farmland parcels to create a large, uninterrupted block of preserved area.
- 9 5. Whether the land may be under some development pressure but the land is not located
10 in an area the county plans for development in the next 15 years.

11 (b) The rationale shall exclude from a farmland preservation area any parcels planned,
12 within 15 years, for nonagricultural development or other incompatible uses in the town or
13 county comprehensive plans.

14 (c) The rationale may not be based primarily on landowner preferences.

15 (d) The rationale shall be applied consistently across the county to the extent applicable
16 and practicable.

17 (e) The farmland preservation plan map shall accurately reflect the rationale utilized by
18 the county.

19 **Note:** Utilizing objective criteria means that the criteria must be applied impartially and
20 not favor some landowners over other landowners. The criteria should be based
21 on characteristics associated with the land itself or existing pressures that may
22 affect the future use of the land instead of focusing solely on the preferences of
23 individual landowners.
24

25 **(2) RELATIONSHIP TO THE COUNTY COMPREHENSIVE PLAN.** (a) The farmland preservation
26 plan shall be consistent with any county comprehensive plan.

Note: To be “consistent with” does not mean that the farmland preservation plan and the comprehensive plan must be identical; however, for the department to find that the plans are consistent there should not be any significant difference between elements of the plans. For example, not every area that is shown as an agricultural area in the comprehensive plan future land use map must be included as a farmland preservation area in the farmland preservation plan map; however, lands planned for residential or non-agricultural commercial use in the comprehensive plan should not be planned for farmland preservation in the farmland preservation plan.

(b) The farmland preservation plan shall be included in any county comprehensive plan.

Note: Under s. 91.10 (2), Stats., the county is required to include the farmland preservation plan in any county comprehensive plan it adopts. Under s. 91.18, Stats., the farmland preservation plan is not qualified for certification by the department if pars. (a) and (b) are not met.

(3) PLAN INELIGIBLE FOR CERTIFICATION. The department may not certify a farmland preservation plan that does not meet the requirements of ch. 91, Stats., and this subchapter.

ATCP 49.14 Applying for certification of a plan or a plan amendment. A county seeking certification of its farmland preservation plan or a plan amendment shall submit all of the following to the department for review:

(1) REQUIRED INFORMATION. The application for certification shall include all of the following in order to be considered complete and to be evaluated for compliance with s. 91.16, Stats.:

(a) An application on a form developed by the department that includes the information required under ss. 91.20 (2) and (3), Stats.

Note: You may obtain a copy of the form by contacting the department at the following address:

Department of Agriculture, Trade and Consumer Protection
Attn: Bureau of Land and Water Resource Management
2811 Agriculture Drive
Madison, WI 53718
Website:

http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Planning/index.aspx

(b) All parts of the plan for which the County is seeking certification.

Note: If the county is seeking certification of a full plan, then the county must submit the text and map of the plan along with the spatial location data used to create the plan map. If the county is seeking certification of a text amendment, the county must submit the plan map as well as the plan text if the text amendment would make any changes which require corresponding changes to the data depicted on the plan map. Similarly, if the county is seeking certification of a map amendment, the county must submit the plan text as well as the plan map if the map amendment would make any changes which require corresponding changes in the plan text.

(c) All spatial location data used to delineate the farmland preservation areas proposed for certification, submitted in accordance with the department requirements on format.

(2) PLAN TEXT. The plan text shall comply with the requirements in ss. 91.10 (1) and (2), Stats., and this subchapter.

(3) PLAN MAP. A farmland preservation plan shall include a map that clearly delineates all areas in the county identified as a farmland preservation area so that a reader can determine whether a parcel is within an identified area. The farmland preservation plan map shall:

(a) Be comprised of one county map or a series of town maps.

(b) Be titled "Farmland Preservation Plan Map" followed by the name of the political subdivision depicted on the map.

(c) Specify the county in which the farmland preservation plan area is located.

(d) Clearly delineate areas designated for farmland preservation, designating parcels as included or excluded from the district and following parcel boundaries where possible.

(e) Display environmental or other overlay areas in a manner that does not obscure or confuse the boundaries of an underlying farmland preservation area.

(f) Be drawn at a scale no greater than one inch to 2,000 feet (1:24,000).

(g) Show political boundaries, parcel boundaries, section lines, section numbers, roads, and water bodies.

(h) Include a map legend with symbols for all data represented on the map.

(i) Identify farmland preservation areas and non-farmland preservation areas with corresponding symbols in the legend and with titles that correspond to the titles in the plan text that apply to those areas.

(j) Specify map scale, north arrow direction, map date, and map producer.

SUBCHAPTER III

FARMLAND PRESERVATION ZONING

ATCP 49.20 General. A political subdivision may adopt a farmland preservation zoning ordinance. In order for the ordinance to be certified by the department under s. 91.36, Stats., the ordinance must meet the requirements of s. 91.38, Stats., and this subchapter.

ATCP 49.22 Permitted uses. In addition to the uses listed under s. 91.44 (1), Stats., existing residences may be allowed as permitted uses in a certified farmland preservation district. Residences, regardless of occupancy, existing as of the effective date [LRB inserts date] or an earlier date specified by the ordinance may be permitted.

NOTE: Residences, which may or may not be associated with a farm, that are constructed as of a date specified in the zoning ordinance text may be allowed as permitted uses in the district. These residences need not receive a conditional use permit unless the local government decides to require it and they need not follow the prior nonconforming use provisions found under s. 59.69 (1), 60.61 (5), or 62.23 (7) (h), Stats., unless mandated by the local government.

ATCP 49.23 Conditional uses. The following uses may be allowed as conditional uses in a certified farmland preservation district provided the uses are subject to legal restrictions imposed by the political subdivision in accordance with s. 91.46, Stats.:

1 (1) SINGLE-FAMILY OR DUPLEX NONFARM DWELLINGS. A proposed new single-family or
2 duplex nonfarm dwelling subject to restrictions established by the political subdivision which
3 demonstrate to the department's satisfaction that the restrictions will be as restrictive as the
4 density standards for nonfarm residences set forth in s. 91.46 (2), Stats.

5 **NOTE:** A political subdivision that chooses to allow limited nonfarm residences within
6 the certified farmland preservation district may choose to implement the Base
7 Farm Tract concept defined in s. 91.01 (5), Stats., and applied through s. 91.46 (2)
8 (c) 1. and 2., Stats., or may utilize an alternative provision developed at the local
9 level. The political subdivision must demonstrate to the Secretary that the local
10 provision limits nonfarm development to the same extent or more as the state
11 statutes so that the alternative policy would not allow for more nonfarm
12 residences to be built or for more nonfarm residential acreage to be introduced
13 into the farmland preservation district. The political subdivision may choose to
14 apply a density restriction to all parcels in the district regardless of whether the
15 parcels qualify as farms under the definition of farm in the ordinance. The
16 conditional use permit for a nonfarm residence is an optional provision that a
17 political subdivision may choose to include in a farmland preservation zoning
18 ordinance.

19 (2) GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USE. A
20 governmental, institutional, religious, or nonprofit community use qualifies as a conditional use
21 if the political subdivision determines that the use qualifies under s. 91.46 (5), Stats., and
22 includes any of the following:

- 23 (a) Hospitals.
- 24 (b) Community centers.
- 25 (c) Police and fire facilities.
- 26 (d) Public parks.
- 27 (e) Cemeteries.

28 **ATCP 49.24 Zoning ordinance certification expiration. (1) CERTIFICATION**
29 **EXPIRATION.** The certification of a farmland preservation zoning ordinance expires on the date
30 provided in the most recent certification of the ordinance or its amendment, or, if the certification

1 does not provide an expiration date, on the date provided under s. 91.34, Stats. If a local
2 government with an expired ordinance does not obtain certification of a farmland preservation
3 zoning ordinance by December 31 of the year following the expiration date, landowners covered
4 by the zoning ordinance are not eligible to claim farmland preservation tax credits beginning in
5 the year following the year of the expiration date.

6 **Note:** If a farmland preservation zoning ordinance expires on December 31, 2014, the
7 political subdivision has until December 31, 2015, to obtain certification of its
8 ordinance by the department. If the political subdivision's ordinance is not
9 certified by the department by December 31, 2015, all landowners with land
10 located in the farmland preservation zoning district may not claim tax credits for
11 tax year 2015. The political subdivision is not precluded from seeking future
12 certification of its farmland preservation zoning ordinance.
13

14 **(2) CERTIFICATION EXPIRATION EXTENSION.** The secretary may delay the expiration date
15 of the certification of a farmland preservation zoning ordinance for up to 2 years upon a written
16 request from the political subdivision demonstrating to the secretary's satisfaction that a delay
17 would allow the political subdivision to coordinate updating the farmland preservation zoning
18 ordinance with other planning efforts in the political subdivision.

19 **ATCP 49.25 Certification standards. (1) QUALIFYING FOR CERTIFICATION.** The
20 department may certify a farmland preservation zoning ordinance under s. 91.36, Stats., if that
21 ordinance complies with the requirements in ss. 91.38 and 91.40, Stats., and this subchapter.

22 **(2) CONSISTENCY WITH FARMLAND PRESERVATION PLAN.** At least 80% of the area
23 planned for farmland preservation in each city, town, or village covered by a certified farmland
24 preservation plan shall be included in the farmland preservation district or a district that imposes
25 land use restrictions as restrictive or more restrictive as the farmland preservation zoning district.

26 **Note:** If an area is planned for farmland preservation but is not zoned for farmland
27 preservation, it may be zoned as open space or conservancy. Such a zoning
28 designation would be consistent with farmland preservation. Areas that are zoned
29 for nonagricultural residential, commercial, or industrial use, however, would not
30 be consistent with farmland preservation.

1
2 **ATCP 49.26 Applying for ordinance certification.** Except as provided under s. 91.36

3 (8), Stats., and s. ATCP 49.27, a political subdivision seeking certification of its farmland
4 preservation ordinance shall submit all of the following to the department for review:

5 **(1) REQUIRED INFORMATION.** The application for certification shall include all of the
6 following in order to be considered complete and evaluated for compliance with s. 91.36, Stats.:

7 (a) An application on a form developed by the department that includes the information
8 required under s. 91.40 (2), Stats.

9 **Note:** You may obtain a copy of the form by contacting the department at the following
10 address:

11
12 Department of Agriculture, Trade and Consumer Protection
13 Attn: Bureau of Land and Water Resource Management
14 2811 Agriculture Drive
15 Madison, WI 53718
16 Website:
17 [http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservati](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Zoning/index.aspx)
18 [on_Zoning/index.aspx](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Zoning/index.aspx)
19

20 (b) All parts of the zoning ordinance for which the political subdivision is seeking
21 certification.

22 (c) All spatial location data used to delineate the farmland preservation zoning districts
23 proposed for certification.

24 **(2) ORDINANCE TEXT.** The ordinance text shall comply with the requirements in s. 91.38
25 (1), Stats.

26 **(3) ORDINANCE MAP.** A farmland preservation zoning ordinance shall include a map that
27 clearly delineates each farmland preservation zoning district so that a reader can determine
28 whether a parcel is within a farmland preservation district. The farmland preservation zoning
29 ordinance map shall:

1 (a) Be compromised of one county map or a series of town maps for a county ordinance,
2 or one map for a city, town, or village ordinance.

3 (b) Be titled "Farmland Preservation Zoning Ordinance Map" followed by the name of
4 the political subdivision depicted on the map.

5 (c) Specify the county in which the farmland preservation zoning district is located, if the
6 map covers only one town, city, or village.

7 (d) Clearly delineate areas zoned for farmland preservation, designating parcels as
8 included or excluded from the district and following parcel boundaries to the extent possible.

9 **Note:** The zoning district does not need to follow parcel boundaries, although the
10 department prefers that districts follow parcel boundaries. Landowners covered by
11 the farmland preservation zoning district are responsible for claiming the correct
12 number of acres of land they own for purposes of a tax credit that are covered by
13 the district, regardless of whether the political subdivision follows parcel
14 boundaries.

15
16 (e) Display environmental or other overlay areas in a way that does not obscure or
17 confuse the boundaries of an underlying farmland preservation zoning district.

18 (f) Be drawn at a map scale no greater than one inch to 2,000 feet (1:24,000).

19 (g) Show political boundaries, parcel boundaries, section lines, section numbers, roads,
20 and water bodies.

21 (h) Include a map legend that includes symbols for all data represented on the map.

22 (i) Identify all mapped farmland preservation districts with titles that correspond to the
23 titles in the zoning ordinance text that apply to those districts.

24 (j) Specify map scale, north arrow direction, map date, and map producer.

25 **ATCP 49. 27 Applying for certification of an ordinance amendment. (1) An**
26 amendment to a certified farmland preservation zoning ordinance is automatically considered to

1 be certified as part of the certified farmland preservation zoning ordinance, except as provided in
2 sub. (2).

3 **Note:** A political subdivision may submit to the department, at any time, an amendment
4 to a certified farmland preservation zoning ordinance, and request a written
5 determination from the department as to whether the amendment requires
6 certification by the department.
7

8 (2) An amendment to a certified farmland preservation zoning ordinance shall be
9 submitted to the department for certification review under s. 91.36, Stats., and s. ATCP 49.26,
10 and is not considered to be automatically certified, if the amendment does any of the following:

11 (a) Adds uses not previously allowed in the farmland preservation district.

12 (b) Eliminates findings or conditions that must be met before approving a use for a
13 location in the farmland preservation district.

14 (c) Increases the number of nonfarm residences or the number of nonfarm acres allowed
15 in the farmland preservation district.

16 (d) Changes the findings required for allowing a rezone out of a farmland preservation
17 district.

18 **Note:** Changing the numbering or formatting of the ordinance, changing the minimum
19 lot size, rezoning land out of a farmland preservation district or making changes
20 that only affect districts outside of the farmland preservation zoning district do not
21 require certification by the department.
22

23 **ATCP 49.29 Withdrawal of certification.** (1) Pursuant to s. 91.36 (8) (c), Stats., the
24 department may by written notice, without prior notice or hearing, withdraw certification of a
25 farmland preservation zoning ordinance under this section. The withdrawal is a summary special
26 order under ch. ATCP 1.

27 (2) The secretary may withdraw certification if any of the following occur:

28 (a) The certification of a county farmland preservation plan for the lands under the
29 certified farmland preservation zoning ordinance has expired.

1 (b) An amendment, adopted after July 1, 2009, to a certified farmland preservation
2 zoning ordinance fails to comply with the requirements of s. 91.38, Stats.

3 (3) The notice shall state the reason for the withdrawal of certification.

4 **Note:** The department may withdraw certification of an ordinance under this section
5 regardless of the date the ordinance was certified, and regardless of whether the
6 ordinance was developed under the provisions of s. 91.06, 2007 Stats., or ch. 91,
7 Stats., (*see* s. 91.36 (8) (c), Stats.).
8

9 SUBCHAPTER IV

10 FARMLAND PRESERVATION AGREEMENTS

11 **ATCP 49.30 Applying for farmland preservation agreements.** In addition to the
12 information required under s. 91.64, Stats., a landowner submitting an application for a farmland
13 preservation agreement shall include information specifying other lands within the agricultural
14 enterprise area designated under s. 91.84, Stats., that the landowner owns that are to be excluded
15 from the farmland preservation agreement and the reason for excluding the lands from coverage
16 under the agreement. When reviewing the application, the department may consider the reason
17 for excluding the lands from coverage under the agreement in determining whether the lands
18 proposed for inclusion are eligible for an agreement. The department may determine that the
19 lands proposed for inclusion are ineligible for the farmland preservation agreement if any of the
20 following apply:

21 (1) The lands to be excluded from the agreement are being withheld for purposes that
22 conflict with the goals of the agricultural enterprise area program under s. 91.84, Stats.

23 (2) The lands to be excluded from the agreement are being withheld for purposes that
24 will likely impair or limit agricultural use on other lands in the agricultural enterprise area or
25 lands proposed for inclusion under a farmland preservation agreement.

1 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
2 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
3 (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Wisconsin Farmland Preservation Program
Adm. Code Reference: ATCP 49
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 12-R-03

Rule Summary

This rule interprets the Wisconsin Farmland Preservation Program administered by the Department of Agriculture, Trade and Consumer Protection ("DATCP"). Among other things, this rule does all of the following:

General

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances.
- Specifies types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3, Stats.
- Authorizes additional uses allowed in a farmland preservation zoning district.
- Specifies information required in an application for a farmland preservation agreement under s. 91.64 (2) (h), Stats.

Definitions

- Clarifies types of uses that may be listed by a political subdivision as accessory uses and agriculture-related uses.
- Defines crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

Farmland Preservation Plans

- Clarifies that a county has one year after the certification expiration date to have its farmland preservation plan certified by the department.
- Clarifies when counties may request an extension to the expiration of their farmland preservation plan to facilitate coordination with other planning and

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under ss. 227.114 and 227.19(3)(e), Stats.

- zoning efforts that may be occurring in the county.
- Clarifies that any amendment to a certified farmland preservation plan must be submitted to the department for certification.
- Clarifies that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county's comprehensive plan.
- Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

Farmland Preservation Zoning

- Clarifies that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive, or more restrictive, than the density standards under ch. 91, Stats.
- Describes the types of uses that would qualify as governmental, institutional, religious, or nonprofit community uses.
- Clarifies that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has a year after the certification expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to collect farmland preservation tax credits.
- Clarifies that local governments may request an extension to the expiration of their farmland preservation zoning ordinance to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

Farmland Preservation Agreements

This rule:

- Requires landowners to include in an application for a farmland preservation agreement those lands that the landowner owns yet intends to exclude from coverage under the agreement.

Business Impact

This rule will have a generally positive impact on agriculture-related businesses. This rule affects businesses in the following ways:

Farmland Preservation Plans

- As part of the farmland preservation planning process, ch. 91, Stats., counties are required to describe the rationale used for determining the farmland preservation area. This rule clarifies that the rationale must be based on objective criteria related to characteristics of the land parcels themselves, including the proximity of parcels to agricultural infrastructure and the historical use of the land for agriculture-related purposes. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that agriculture-related businesses can be measured within the community and aid counties as they continue to plan for the presence of these businesses.

Farmland Preservation Zoning

- Chapter 91, Stats., allows a political subdivision to locate accessory and agriculture-related uses within a certified farmland preservation district. This rule clarifies the types of uses that may be considered accessory and agriculture-related.
- Accessory uses, under the rule, include facilities for storing, processing, selling, and housing agricultural products. Such uses primarily support agricultural activities occurring on the farm. These uses can make it possible for a farm to generate income through direct-to-consumer sales, such as a roadside farm, or can add value to a product produced on the farm, such as a cheese processing facility. The rule also clarifies that an accessory use can include those uses that may generate income yet do not conflict with (or may be enhanced by) the farm operation. Listed uses include crop mazes, agricultural tourism, and you-pick operations. The clarification of accessory use facilitates the inclusion of agricultural businesses, particularly small agricultural businesses, within the farmland preservation district.
- The rule also clarifies that agriculture-related uses include facilities that support agriculture even though the use itself may not be located on a farm. Such uses include facilities that primarily provide agricultural supplies, agricultural equipment, fertilizers, pesticides or other agricultural inputs, or other agricultural services directly to farms. These uses also include manure digesters, facilities that

slaughter livestock, and agricultural processing plants. The rule clarifies that political subdivisions may include within a farmland preservation zoning district businesses that support agriculture. Allowing such businesses to locate within a farmland preservation district helps provide these businesses with a potential customer base and may add additional economic certainty to farmers with land in the certified farmland preservation district.

Farmland Preservation Agreements

- This rule requires landowners who submit an application to the department for a farmland preservation agreement to include in the application all lands owned within an Agricultural Enterprise Area that will not be covered by the agreement. This requirement ensures that landowners claiming tax credits under the agreement will not reserve land for purposes that conflict with the preservation of farmland. This in turn provides added certainty to neighboring farmers that conflicting uses will not threaten the continued agricultural production on their land.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for small businesses because the farmland preservation program encompasses agricultural operations of all sizes.

This rule includes provisions that will benefit large and small businesses alike. For example, this rule:

- Requires counties to consider agricultural businesses, regardless of size, when determining which lands to plan for farmland preservation.
- Clarifies that certain activities that support and enhance agricultural uses may be located within a farmland preservation zoning district. These activities may include supplemental business ventures that can help support a small agricultural operation, such as agricultural tourism or seasonal activities.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 4th day of December, 2012.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


John Petty, Administrator

Division of Agricultural Resource Management

